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9/Election

Case 8246

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Bet
11-1-02

In the Application of :
Sanjeev Midha et al :
Serial No. 09/821,942 :
Confirmation No. 8169 : Group Art Unit 1615
Filed March 30, 2001 : Examiner L.S. Channavajjala
For LEAVE-IN HAIR COSMETIC COMPOSITIONS FOR ENHANCING
VOLUME CONTAINING FLUID-ENCAPSULATED, FLEXIBLE MICROSPHERES

RESPONSE TO RESTRICTION REQUIREMENT/ELECTION OF SPECIES

Commissioner of Patents

Washington, DC 20231

Dear Madam:

This is responsive to the Office Action mailed on April 8, 2002, setting a one month period for response.

Response to Restriction Requirement of Claims 1-23

The Office Action states that the restriction to one patentably distinct species of inventions is required under 35 USC §121. Applicants respectfully traverse the Restriction Requirement. Applicants request reconsideration of the Restriction Requirement for the following reasons: 1) The inventions are not "independent and distinct" and 2) There is no serious burden placed on the examiner to consider all claims.

When two or more related inventions are being claimed, restriction is never proper if they are not distinct (MPEP §806.05). The term "distinct" means that two or more subjects as disclosed are related, but are capable of separate manufacture, use, or sale as claimed, and are patentable over each other. Applicants submit that the present leave-in hair compositions are not distinct. Claims 19 and 23 require two thickening agents (selected from groups consisting of a hydrophobically modified cellulose ether, an acrylates copolymer, and a crosslinked polymer) in addition to fluid-encapsulated,

09/821,942

flexible microspheres and an aqueous carrier. Claims 1-18 and 20-22 require fluid-encapsulated, flexible microspheres, a water-soluble or swellable polymer, and an aqueous carrier. Thus, Claims 1-23 all consider fluid-encapsulated, flexible microspheres, *polymers*, and an aqueous carrier. Therefore, Applicants submit that the leave-in hair compositions of the present invention are not distinct to warrant restriction.

Applicants submit that the polymers in claims 1-23 are so closely related that it would not present an undue burden on the examiner to examine the art based on those specific polymers.

For these reasons, Applicants submit that the restriction requirement applied to Claims 1-23 of the above identified application is improper and should be withdrawn.

Provisional Election

In the event that the Examiner's election is made final, Applicants hereby provisionally elect Group I (Claims 1-18 and 20-22). Applicants reserve the right to pursue the non-elected claims in one or more divisional applications.

Respectfully submitted,
Sanjeev Midha, et al.

By Brent M. Peebles
Brent M. Peebles
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May 8, 2002
Customer No. 27752

***** -COMM. ***** DATE MAY-08-2001 TIME 11:04 *** P.01

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Inventor(s): Sanjeev Midha, et al.
S.N.: 09/621,942
Filed: 3/30/01
Conf. No.: 8189
Case: 8246

IN THE UNITED STATES PATENT & TRADEMARK
RESPONSE/AMENDMENT

ICE

Case Docket No. 8246

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Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Transmitted herewith is a **RESPONSE** for the patent application:

Inventor(s): Sanjeev Midha et al.

Serial No.: 09/821,942

Confirmation No. 8169

Group Art Unit: 1615

Date Filed: March 30, 2001

Title: Leave-in Hair Cosmetic Compositions for Enhancing Volume Containing Fluid-Encapsulated, Flexible Microspheres

1. No additional claims fee is known to be required.
2. The fee has been calculated as shown below:

(Col. 1)		(Col. 2)		(Col. 3)		OTHER THAN A SMALL ENTITY	
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA*		RATE	Fee
TOTAL	*	MINUS	**	=		x \$18 =	\$ --
INDEP.	*	MINUS	***	= ---		x \$80 =	\$ --
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM						+ \$270 =	\$ --
						TOTAL	\$ --

3. The Commissioner is separately petitioned under 37 CFR §1.136(a) to grant any extension of time needed for timely response to the Office Action dated _____ in the above-identified application to preserve pendency of said application. The processing fee under 37 CFR §1.17 has been determined as follows: \$____ for a ___ () month extension of time.
4. The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 16-2480. A duplicate copy of this sheet is attached.
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 - b. Any patent application processing fees under 37 CFR §1.17.
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 Brent M. Peebles
 Attorney for Applicants
 Registration No. 38,576
 Tel. No. (513) 626-2404

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